

1 **Administrative Procedures Act Rules**

2
3
4
5 **Title 11: Mississippi Department of Environmental Quality**

6
7 **Part 1: Administrative Regulations**

8
9 **Part 1, Chapter 1: Mississippi Commission on Environmental Quality Regulations**
10 **Regarding the Delegation of Authority to the Executive Director of the Mississippi Department of**
11 **Environmental Quality (Adopted May 24, 2001; Amended March 27, 2003)**

12
13 **TABLE OF CONTENTS**

14
15
16 Rule 1.1 Delegations
17

18
19 **Introduction:** Statutes regarding environmental and natural resources issues in Mississippi
20 grant the Mississippi Commission on Environmental Quality ("Commission") broad discretion to
21 delegate many of its statutory authorities to the Executive Director of the Mississippi Department
22 of Environmental Quality ("MDEQ"). Since the creation of the Commission and its predecessor
23 bodies, the Mississippi Air and Water Pollution Control Commission and the Mississippi
24 Commission on Natural Resources, the Commission has delegated certain authorities to the
25 Executive Director by agency action reflected in the minutes of the Commission. The
26 Commission now consolidates these delegations, adds additional delegations, and promulgates
27 these delegations as a regulation pursuant to the Mississippi Administrative Procedures Law.

28
29 The chart below describes specific delegations of authority and lists the most pertinent statutory
30 authorization for the delegation. The Commission, however, also is given a broad general
31 authority to delegate its authority by Miss. Code Ann. § 49-17-17(o). That section authorizes the
32 Commission "to delegate in such manner as it sees fit the duties and powers relating to air and
33 water quality and pollution control to the agency members presently engaged in the several fields of
34 water or air control or pollution." Miss. Code Ann. § 49-17-17(n) authorizes the Commission to
35 "exercise all incidental powers necessary to carry out the purposes of Sections 49-17-1 through 49-
36 17-43 and Sections 17-17-1 through 17-17-47." The Commission interprets these statutes to allow
37 the delegation of authority to the Executive Director to perform all actions within the jurisdiction of
38 the Commission required to protect the quality and quantity of the state's water resources and the
39 quality of the state's ambient air and to regulate solid nonhazardous and hazardous waste within the
40 State. This delegation authority by definition allows delegation of authorities related to the three
41 offices of MDEQ created by statute: The Office of Geology and Energy Resources, the Office of
42 Land and Water Resources, and the Office of Pollution Control. *See* Miss. Code Ann. § 49-2-7.

43
44 The Commission also interprets these statutes as allowing the delegation to the Executive
45 Director of authorities necessary to perform the day-to-day functions of MDEQ through the
46 Office of Administrative Services, as created by Miss. Code Ann. § 49-2-17. Additionally, Miss.

Code Ann. § 53-7-19(p) allows the Commission to authorize the director "to discharge or exercise any power or duty granted to the commission by the provisions" of the Surface Mining and Reclamation Law. This regulatory action is not intended to revoke any authorization previously granted to the Executive Director and not listed in this regulation.

The delegation of authority to the Executive Director does not require the Executive Director to exercise the authority delegated. The Executive Director may determine, on a case-by-case basis, that a decision within his or her authority to make should be referred to the Commission for consultation and/or decision.

Rule 1.1 Delegations: The Commission delegates the following powers to the Executive Director of MDEQ:

- A. To Employ Qualified Professional Personnel and Technical and Clerical Staff as may be Required for the Operation of the Department.
- B. To Organize the Administrative Unites of the Department and Alter Such Organizational Structure and Reassign Responsibilities as he May Deem Necessary to Carry out the Policies of the Commission Within the Limits of Section 49-2-7.¹
- C. To Delegate the Authority to Sign Commission Orders to the Head of the Office of Pollution Control, and the Head of the Office of Geology and Energy Resources, the Head of the Office of Land and Water and Water Resources and the General Counsel of MDEQ to the Extent that the Executive Director is Allowed to Issue Orders Pursuant to Miss. Code Ann. § 49-2-13(j).
- D. To Issue Orders in Accordance with Section 17-17-227 Approving or Denying in Whole or in Part Solid Waste Management Plans and/or Amendments thereof.
- E. To Issue Administrative Orders:
 - (1) To Prohibit, Control or Abate Discharges of Contaminants and Wastes into the Air and Waters of the State.
 - (2) To Require Appropriate Remedial Measures to Prevent, Control or Abate Air and Water Pollution or to Cause the Proper Management of Solid Wastes.
 - (3) To Impose Penalties Which the Respondent Agrees to Pay.
 - (4) To Require Compliance with Permits and Regulations.

¹ Authorities listed in this rule are not inclusive and are in addition to authorities listed in the Introduction; Title 11, Part 1, Chapter 1.

- 1 (5) To Issue Emergency Orders Pursuant to Section 49-17-27.
2
- 3 F. To Execute All Orders Required by the Brownfields Statute that are not Specifically
4 Required by Statute and/or Regulation to be Issued by the Full Commission.
5
- 6 G. To Issue Cease Pumping Orders and Orders Conditioning Permitted Water Withdrawal to
7 Issue Cease and Desist Orders to Surface Mining Operators who are Mining Without the
8 Required Permit or Notice of Intent to Mine or Who are Otherwise Operating in
9 Violation of Mississippi Law.
10
- 11 H. To Make Preliminary Determinations Necessary to File Suit, File Suit, Conduct
12 Litigation, and Settle all Litigation Matters on Behalf of the Commission.
13
- 14 I. To Enter Into All Contracts, Grants and Cooperative Agreements Allowed by 49-2-9(e).
15
- 16 J. To Delegate Signature Authority for Agency Contracts, Purchase Orders, Travel
17 Reimbursement Authorizations, Requisitions, Personnel Forms, and Similar Documents
18 to the Head of the Office of Administrative Services and/or to the Division Chiefs within
19 that Office.
20
- 21 K. To Grant Continuances for Scheduled Formal Hearings; To Issue Nondispositive Rulings
22 Regarding Contested Matters (Such as, Scheduling Orders and Decisions on Interlocutory
23 Motions), and to Stay pending Evidentiary Hearing on the Effectiveness of a Commission
24 Order Upon a Showing of Good Cause by Any Party.
25
- 26 L. To Issue Asbestos Certifications and Approve Asbestos Abatement Training Programs.
27
- 28 M. To Issue UST Certifications to Individuals Authorized to Install, Alter and /or Close
29 USTs.
30
- 31 N. To Issue Landfill (Solid Waste) Operator Certifications.
32
- 33 O. To Issue Wastewater Operator Certifications and Approve Wastewater Training
34 Programs.
35
- 36 P. To Issue Water Well Driller Licenses.
37
- 38 Q. To Issue Lead Certifications and Approve Lead-Based Paint Activities Training
39 Programs.
40
- 41 R. To Issue Waste Tire Transporter Certificates.
42
- 43 S. To Requisition and Use Funds in the Pollution Emergency Fund, Solid Waste Corrective
44 Action Trust Fund, and All Other Funds Created by Title 17 and Title 49 and Within the
45 Jurisdiction of the Commission for the Statutory Purposes Allowed by the Code.
46

- T. To Discharge or Exercise Any Power or Duty Granted to the Commission by the Provisions of the Surface Mining and Reclamation Law.
- U. To Execute Reciprocity Agreements with Other States Whose Lead Based Paint Program Requirements Meet or Exceed the Commission's Requirements.
- V. To Waive the Late Penalty for Failure to Pay UST Fee Upon Sufficient Demonstration that Failure to Pay Timely was Unavoidable Due to Financial Hardship or Otherwise Beyond the Control of the Owner.
- W. To Compile and Publish Compilations of the Regulations of the Commission and Permit Board.
- X. To Approve and Award Local Governments Solid Waste Assistance Grants (Competitive Grants and Non-Competitive Grants), Local Governments Waste Tire Collection and Clean Up Grants, Local Government Tire Derived Products Grants, Incentive Waste Tire Recycling and Research Grants, Local Government Planning Grants, Right Way To Throw Away Grants (Local Hazardous Waste Amnesty/Collection Event Grants); and Pollution Prevention/Recycling Grants Otherwise Allowed by Law.

Source: Miss. Code Ann. §§ 21-27-207, 21-27-211, 49-2-5 (3), 49-2-9(e) and (f), 49-2-13 (c), (e), (j) and (k), 49-2-17, 49-17-17 (c),(n), and (o), 49-17-23, 49-17-44.1, 49-17-43(d), 49-17-68, 49-17-421, 49-17-429, 49-17-507, 49-17-531, 49-35-11(4), 17-17-63, 17-17-65, 17-17-227, 17-17-407(b), 17-17-425, 51-3-7, 53-7-19(l), (m) and (p), 37-138-9, 51-5-1(1) and (5), 49-31-1, et seq., 49-2-1, et seq., 49-17-1, et seq., 17-17-1, et seq., 17-17-201, et seq., 17-17-401, et seq. and 17-17-501, et seq.

Part 1, Chapter 2: Mississippi Commission on Environmental Quality Regulations Regarding the Review and Reproduction of Public Records.

TABLE OF CONTENTS

Rule 2.1 Guiding Principle	
Rule 2.2 Agency Response to Public Document Requests	
Rule 2.3 Document Reproduction	
Rule 2.4 Document Reproduction and Certification Costs	
Rule 2.5 Reproduction by MDEQ Staff	
Rule 2.6 Requests for Treatment of Documents as Confidential	

Introduction.

This document sets forth procedures for the public review and reproduction of documents of the Mississippi Commission on Environmental Quality ("Commission"), the Mississippi Environmental Quality Permit Board ("Permit Board"), and the Mississippi Department of Environmental Quality ("MDEQ").

Rule 2.1 Guiding Principle. In 1983 the Mississippi Legislature passed the Mississippi Public Records Act (the Act), Miss. Code Ann. §§ 25-61-1 through 25-61-17 (Rev. 1999). These state statutes define "public records," mandate public access to "public records," require a written explanation of denial to access, declare certain records to be exempt from public access, allow fees to cover costs, and provide a penalty for wrongful denial of access to records.

The Commission, the Permit Board, and MDEQ practice an open records policy and allow individuals the opportunity to review and reproduce records not exempt from disclosure in as expeditious and efficient a manner as is practicable. Examples of records that are exempt as privileged by law and not available for inspection include personnel records, appraisals, attorney communications and work product, and certain enforcement/investigative materials. Further, records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information and that do not concern environmental protection (see Miss. Code Ann. §49-17-39) may be held as confidential.

MDEQ's treatment of file information also is constrained by two statutes which apply only to MDEQ: Miss. Code Ann. §§ 17-17-27 and 49-17-39. These statutes are almost identical. The first applies to information concerning the regulation of nonhazardous and hazardous waste, and the second applies more generally to all information obtained by the Commission, Permit Board, and MDEQ. These statutes require that all information "concerning environmental protection" collected by MDEQ, the Commission, and the Permit Board be treated as "public information" that "shall be made available upon proper request." Although the statutes allow for the protection of trade secrets and some confidential business information, Miss. Code Ann. § 49-17-39 has been interpreted by the Chancery Court of Hinds County as allowing confidentiality protection only for a narrow subset of information obtained by the Commission. Pursuant to §§ 17-17-27 and 49-17-39, only trade secret information or confidential business information that does not concern environmental protection may be treated as confidential. See *Platte Chemical Co. v. Mississippi Commission on Environmental Quality*, Cause No. G-96-1442 S/2 (Hinds County Chancery Court March 31, 1997).

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-17, 17-17-27, 49-17-39, 49-17-17 (i), 49-2-1, *et seq.*, 49-17-1, *et seq.*, and 17-17-1, *et seq.*

Rule 2.2 Agency Response To Public Document Requests. Public records requests are managed by MDEQ's Freedom of Information Administrator. Any request for access to or copies of public records must be made in writing and addressed to Freedom of Information Administrator, Mississippi Department of Environmental Quality, P.O. Box 2261, Jackson, Mississippi 39225. The

request may be faxed to the Freedom of Information Administrator at (601) 961-5118 or sent by e-mail to or through the MDEQ Web Site. The written request should describe in reasonable detail the information sought (including the name and location of the reporting facility, if applicable), the date of the request, and the requestor's name, address, and telephone number.

MDEQ will provide records not exempt from disclosure for review or reproduction as soon as practicable, but no later than 14 working days from the date of the request, as allowed by the Act. On many occasions, MDEQ will be able to honor routine document requests within 2-3 days or less.

When an individual submits a written request, the FOI Administrator determines the exact location of the records requested. All records normally will be reviewed at the MDEQ office location where the records are housed. If an individual seeks to review records that are housed at multiple MDEQ locations, the FOI Administrator will work with MDEQ staff and the individual requesting the record review to set up an appointment at the appropriate MDEQ building.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-17, 17-17-27, 49-17-39, 49-17-17 (i), 49-2-1, *et seq.*, 49-17-1, *et seq.*, and 17-17-1, *et seq.*

Rule 2.3 Document Reproduction. MDEQ allows individuals submitting a written request for records to copy documents that are not exempt from disclosure or to have the documents copied for them. The costs of reproduction and certification are payable by the requesting individual, firm, or their representative. Reproductions and certifications will be released once an invoice is signed by the individual, firm, or their representative requesting the records. MDEQ will mail a bill for payment once the invoice is signed, to be paid upon the receipt of the bill. Failure to pay a bill will result in the individual, firm or their representative having to pay in cash prior to the release of subsequent reproductions and certifications.

Source: Miss. Code Ann. §§ 25-61-1 through 25-61-17, 17-17-27, 49-17-39, 49-17-17(i), 49-2-1, *et seq.*, 49-17-1, *et seq.*, and 17-17-1, *et seq.*

Rule 2.4 Document Reproduction and Certification Costs. The schedule of charges and/or fees will be filed with the Secretary of State's Office, in accordance with the Public Records Act, and will be posted in the File Review Room.

Certification of Documents¹ will be provided at the following cost:

A. \$ 3.00 for first page or document certified

B. \$ 1.00 for each additional page or document to be certified

C. Minimum charge of \$3.00 per request

1 Additional fees incident to document reproduction may include the cost of postage if reproduction
2 and/or certification of documents are requested to be mailed to the individual making the records
3 review request.¹

4
5 Source: Miss. Code Ann. §§ 25-61-1, et seq., 25-61-17, 17-17-27, 49-17-39, 49-17-17(i), 49-2-
6 1, et seq., 49-17-1, et seq., and 17-17-1, et seq.

7
8 *Rule 2.5 Reproduction by MDEQ Staff.* In general, MDEQ is not staffed sufficiently to respond
9 to requests for MDEQ personnel to copy documents for members of the public. Although MDEQ
10 staff will attempt to facilitate document availability and review, MDEQ usually will (and
11 reserves the right to) deny requests to assign MDEQ staff the task of copying records for
12 members of the public.

13
14 Source: Miss. Code Ann. §§ 25-61-1, et seq., 25-61-17, 17-17-27, 49-17-39, 49-17-17(i), 49-2-
15 1, et seq., 49-17-1, et seq., and 17-17-1, et seq.

16
17 *Rule 2.6 Requests for Treatment of Documents as Confidential.* Pursuant to Miss. Code Ann. §§ 17-
18 17-27 and 49-17-39, citizens and regulated entities providing information to MDEQ can request that
19 the information be held confidential and not be made available for public inspection. This protection
20 can be claimed properly, however, only for information that does not concern environmental
21 protection. In order to satisfy these statutes, a request for confidentiality must be made in the
22 following manner:

- 23
24 A. The request must be made, in writing, no later than simultaneously with the submission
25 of the information to MDEQ;
26
27 B. The request must describe the information that the requestor would have treated as
28 confidential and must explain the reason(s) why the information qualifies for confidential
29 treatment; and
30
31 C. The request must allow disclosure of the confidential information "to authorized
32 department employees and/or the United States Environmental Protection Agency
33 (EPA)."
34

35 Obviously, this means that merely stamping a document "confidential" is not sufficient to allow the
36 Commission to treat the document as confidential.

37
38 In order for the claim of confidentiality to become effective against public review, the claim
39 must then be "determined by the commission to be valid." This determination would be made (or
40 denied) after an evidentiary hearing before the Commission held pursuant to Miss. Code Ann. §
41 49-17-35.
42

¹ MDEQ public record files are working documents, and documents are added to the files regularly. No certification will be made that the records reviewed are the "complete" file, only that the document(s) reproduced are certified as a true copy from the records. Certifications will be signed and dated either by the MDEQ Executive Director, his or her designee, or the Freedom of Information Administrator or his or her supervisor

1 MDEQ has adopted the following policy in order to minimize the number of Commission
2 hearings on confidentiality claims that need be pursued. When a citizen or regulated entity
3 submits information under a claim of confidentiality, the claim will be honored initially by
4 MDEQ if the claim regards information that arguably could be considered as not "concerning
5 environmental protection" and if the claim meets the three requirements set forth above. If a
6 claim of confidentiality is judged to meet these three requirements, and the document is judged
7 arguably to include information not concerning environmental protection, then that information
8 will be treated as confidential *until and unless a member of the public requests to review the*
9 *information*. At the time the information is placed in an MDEQ confidential file, a notice will be
10 placed in the entity's public record file indicating that additional information to which a claim of
11 confidentiality attaches is included in a confidential MDEQ file.

12
13 If and when a member of the public requests access to the information held by MDEQ under a
14 claim of confidentiality, the supplier of the information will be notified of the request and will be
15 given the option either to request a hearing before the Commission concerning the claim of
16 confidentiality or to allow the information to be reviewed. If a hearing is requested, the
17 information will be treated as confidential by MDEQ until the Commission makes a determination
18 on the issue and during the time in which an appeal of that Commission determination could be
19 taken (if the Commission determination is adverse to the person or entity claiming
20 confidentiality).

21
22 On the other hand, if an initial claim of confidentiality is judged by MDEQ as not meeting the
23 requirements set forth above, and/or as containing information concerning environmental
24 protection, then the person supplying the information will be notified promptly of MDEQ's
25 conclusion and will be notified of his or her right to pursue the claim of confidentiality before the
26 Commission at the next available Commission meeting. The claimant will be given ten days from
27 notification of deficiency by MDEQ in which either to correct any deficiency in the confidentiality
28 claim (such as the lack of required permission for EPA review) or to request in writing a hearing
29 before the Commission on the confidentiality claim. After that ten-day period, the information will
30 be treated as public information by MDEQ if no adequate correction of the claim or written request
31 for a hearing has been made. Again, if a timely written request for a hearing is received, MDEQ will
32 treat the information in question as confidential until the Commission makes a final determination
33 and the period for perfecting an appeal regarding that decision has run.

34
35 If the Commission denies the claim of confidentiality and the claimant perfects an appeal of that
36 decision to a court of appropriate jurisdiction (by filing a notice of appeal with MDEQ, as
37 required by Miss. Code Ann. § 49-17-41), MDEQ automatically will continue to treat the
38 information at issue as confidential for thirty days after the filing by MDEQ of the record on
39 appeal with the appropriate court. Within that thirty days, the claimant must apply to the court in
40 which the appeal is lodged for any further protection of the information pending appeal (through
41 a temporary restraining order, preliminary injunction, or similar relief). MDEQ will treat the
42 information as public information after that thirty-day period unless a court of appropriate
43 jurisdiction instructs MDEQ to hold the information as confidential or unless all parties to the
44 matter agree otherwise.

1 Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-17, 17-17-27, 49-17-35, 49-17-39, 49-17-
2 41, 49-17-17(i), 49-2-1, *et seq.*, 49-17-1, *et seq.*, and 17-17-1, *et seq.*
3
4
5
6
7

8 **Part 1, Chapter 3: Mississippi Commission on Environmental Quality Regulations**
9 **Regarding Administrative Procedures Pursuant to the Mississippi Administrative**
10 **Procedures Act. (Adopted November 17, 2005)**
11

12 **TABLE OF CONTENTS**
13
14

15 Rule 3.1 Description of Mississippi Commission on Environmental Quality and Mississippi
16 Department of Environmental Quality
17

18 Rule 3.2 When Oral Proceedings Will be Scheduled on Proposed Rules
19

20 Rule 3.3 Notification of Oral Proceedings for Rule-Making
21

22 Rule 3.4 Presiding Officer
23

24 Rule 3.5 Public Presentations and Participation for Proposed Rule-Making
25

26 Rule 3.6 Conduct of Oral Proceeding for Proposed Rule-Making
27

28 Rule 3.7 Persons Who May Request Declaratory Opinions
29

30 Rule 3.8 Subjects Which May be Addressed in Declaratory Opinions
31

32 Rule 3.9 Circumstances in Which Declaratory Opinions Will Not be Issued
33

34 Rule 3.10 Where to Send Requests
35

36 Rule 3.11 Name, Address, and Signature of Requestor
37

38 Rule 3.12 Question Presented
39

40 Rule 3.13 Time for Commission's Response
41

42 Rule 3.14 Notice by Commission to Third Parties
43

44 Rule 3.15 Public Availability of Requests and Declaratory Opinions
45
46

1 *Rule 3.1 Description of Mississippi Commission on Environmental Quality and Mississippi*
2 *Department of Environmental Quality.* Reference is made to Miss. Code Ann. §§ 49-2-1, *et seq.*,
3 and 49-17-1, *et seq.* (Rev. 2003), which create and set forth the duties and responsibilities of the
4 Mississippi Commission on Environmental Quality (“Commission”) and the Mississippi
5 Department of Environmental Quality (“Department”). The Commission is empowered to
6 formulate environmental policy, adopt and enforce rules and regulations, receive funding,
7 conduct studies for using the State's resources, and discharge duties, responsibilities and powers
8 as necessary. The seven members are appointed by the governor. The Department serves as
9 staff for the Commission. The Department staff is comprised of four (4) divisions: the Office of
10 Administrative Services, the Office of Geology and Energy Resources, the Office of Land and
11 Water Resources, and the Office of Pollution Control. The Executive Director of the Department
12 serves as the Executive Director of the Commission.

13
14 Source: Miss. Code Ann. §§ 25-43-2.104, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
15 *seq.* and 49-17-1, *et seq.*

16
17 *Rule 3.2 Oral Proceedings Will Be Scheduled on Proposed Rules.* Prior to the adoption,
18 amendment, or repeal of rules and regulations administered by the Department, the Commission
19 shall conduct a public hearing after public notice. Such notice shall be given by publication once
20 a week for three (3) successive weeks in a newspaper having a general circulation throughout the
21 state. The notice shall contain a description of the proposed regulation and the time, date, and
22 place of the hearing.

23
24 Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
25 *seq.*, and 49-17-1, *et seq.*

26
27 *Rule 3.3 Notification of Oral Proceeding for Proposed Rule-Making.* The date, time, and place
28 of all oral proceedings for proposed rule-making shall be filed with the Office of the Secretary of
29 State and, within three (3) days of such filing, mailed to anyone who makes a timely request.
30 The oral proceedings shall be scheduled no earlier than twenty (20) days from the filing of this
31 information with the Office of the Secretary of State. For at least twenty-five (25) days from the
32 filing with the Office of the Secretary of State of the notice of proposed rule adoption, the
33 Commission shall afford persons the opportunity to submit, in writing, argument, data, and any
34 views on the proposed rule.

35
36 Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1,
37 *et seq.* and 49-17-1, *et seq.*

38
39 *Rule 3.4 Presiding Officer.* The Executive Director of the Department, or his designee who is
40 familiar with the substance of the proposed rule, shall preside at the oral proceeding on a
41 proposed rule.

42
43 Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
44 *seq.*, and 49-17-1, *et seq.*

45
46 *Rule 3.5 Public Presentations and Participation for Proposed Rule-Making.*

- 1
- 2 A. At an oral proceeding on a proposed rule, persons may make oral statements and may
- 3 make documentary and physical submissions, which may include views, comments, or
- 4 arguments concerning the proposed rule.
- 5
- 6 B. The presiding officer may place time limitations on individual oral presentations when
- 7 necessary to assure the orderly and expeditious conduct of the oral proceeding. To
- 8 encourage joint oral presentations and to avoid repetition, additional time may be
- 9 provided for persons whose presentations represent the views of other individuals as well
- 10 as their own.
- 11
- 12 C. Persons making oral presentations are discouraged from restating matters that already
- 13 have been submitted in writing.
- 14
- 15 D. There shall be no interruption of a participant who has been given the floor by the
- 16 presiding officer, except that the presiding officer may, in his or her discretion, interrupt
- 17 or end the participant's time for presentation where the orderly conduct of the proceeding
- 18 so requires.
- 19

20 Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*

21 *seq.*, and 49-17-1, *et seq.*

22

23 *Rule 3.6 Conduct of Oral Proceeding for Proposed Rule-Making.*

24

- 25 A. Presiding officer. The presiding officer shall have authority to conduct the proceeding for
- 26 proposed rule-making in his or her discretion for its orderly conduct. The presiding
- 27 officer may:
- 28
- 29 (1) call the proceeding to order;
- 30
- 31 (2) allow for a brief synopsis of the proposed rule and a statement of the statutory
- 32 authority for the proposed rule;
- 33
- 34 (3) call on those individuals who desire to speak for or against the proposed rule;
- 35
- 36 (4) allow for additional statements following all participants' comments; and
- 37
- 38 (5) adjourn the proceeding.
- 39
- 40 B. Questions. Where time permits and to facilitate the exchange of information, the
- 41 presiding officer may open the floor to questions or general discussion concerning the
- 42 proposed rule. The presiding officer in his or her discretion may question participants
- 43 and/or permit the questioning of participants by other participants about any matter
- 44 relating to that rule-making proceeding, including any prior written submissions made by
- 45 those participants; however, no participant shall be required to answer any question.
- 46

1 C. Physical and Documentary Submissions. Submissions presented by participants in an oral
2 proceeding with regard to proposed rule-making shall be submitted to the presiding
3 officer. Such submissions become the property of the Commission and are subject to the
4 Commission's public records request procedures.
5

6 D. Recording. The Commission or Department may record oral proceedings for the purpose
7 of rule-making by stenographic or electronic means, at its discretion.
8

9 Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
10 *seq.*, and 49-17-1, *et seq.*
11

12 *Rule 3.7 Persons Who May Request Declaratory Opinions.* Any person with a substantial
13 interest in the subject matter may request a declaratory opinion from the Commission by
14 following the specified procedures. "Substantial interest in the subject matter" means: an
15 individual, business group, or other entity that is directly affected by the Commission's
16 administration of a statute, rule, or order within its primary jurisdiction.
17

18 Source: Miss. Code Ann. § § 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17 (i), 47-17-25, 49-2-1,
19 *et seq.*, and 49-17-1, *et seq.*
20

21 *Rule 3.8 Subjects Which May Be Addressed In Declaratory Opinions.* The Department on behalf
22 of the Commission will issue declaratory opinions regarding the applicability to specified facts
23 of:
24

25 A. a statute administered or enforceable by the Commission,
26

27 B. a rule promulgated by the Commission, or
28

29 C. an order issued by the Commission.
30

31 The Commission will not issue a declaratory opinion regarding a statute, rule, or order which is
32 outside the primary jurisdiction of the agency. "Primary jurisdiction of the agency" means the
33 agency has a constitutional or statutory grant of authority in the subject matter at issue.
34

35 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
36 *seq.*, and 49-17-1, *et seq.*
37

38 *Rule 3.9 Circumstances In Which Declaratory Opinions Will Not Be Issued.* The Department on
39 behalf of the Commission may, for good cause, refuse to issue a declaratory opinion. The
40 circumstances in which declaratory opinions will not be issued include, but are not necessarily
41 limited to:
42

43 A. lack of clarity concerning the question presented or situations in which the facts
44 presented in the request are not sufficient to answer the question presented;
45

- 1 B. pending or anticipated litigation, administrative action, or other adjudication or decision
2 making which either may answer the question presented by the request or otherwise make
3 an answer unnecessary;
4
- 5 C. requests that fail to contain information required by these rules or in which the requestor
6 failed to follow the procedures set forth in these rules;
7
- 8 D. issues which have become moot, or are abstract or hypothetical such that the requestor is
9 not substantially affected by the application of the statute or rule;
10
- 11 E. issues in which no present controversy exists, meaning that the requestor is not faced
12 with existing facts or those certain to arise which raise a question concerning the
13 application of the statute or rule;
14
- 15 F. questions concerning the legal validity of a statute or rule;
16
- 17 G. requests not based upon facts calculated to aid in the planning of future conduct, but
18 rather, adjudication of the correctness of past conduct or efforts to establish the effect of
19 that conduct;
20
- 21 H. questions involving the application of a criminal statute or sets of facts that may
22 constitute a crime;
23
- 24 I. questions the answer to which would require disclosure of information which is
25 privileged or otherwise protected from disclosure by law;
26
- 27 J. questions that are known to be currently the subject of an Attorney General's opinion
28 request or which already have been answered by an Attorney General's opinion;
29
- 30 K. questions on which a similar request is pending before the Commission, or concerning
31 which a proceeding is known to be pending on the same subject matter before any
32 agency, administrative or judicial tribunal;
33
- 34 L. questions where issuance of a declaratory opinion may adversely affect the interests of
35 the State, the Commission, or any of their officers or employees in any litigation pending
36 or which reasonably may be expected to arise;
37
- 38 M. questions that involve eligibility for a license, permit, certificate, or other approval by the
39 Commission or some other agency, where there is a statutory or regulatory application
40 process by which eligibility for said license, permit, certificate, or other approval would
41 be determined; or
42
- 43 N. requests not directed to the Executive Director of the Department.
44

45 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
46 *seq.*, and 49-17-1, *et seq.*

1
2 *Rule 3.10 Where to Send Requests.* All requests for declaratory opinions from the Commission
3 must be in writing and mailed, e-mailed, delivered, or transmitted via facsimile specifically to
4 the Executive Director of the Department. The facsimile telephone number for the Department
5 may be found at its website, . No oral or telephone requests or requests for declaratory opinions
6 will be accepted. Requests not directed to the Executive Director of the Department shall not be
7 considered as requests for declaratory opinions under these rules, and a response to such requests
8 shall not be provided.

9
10 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
11 *seq.*, and 49-17-1, *et seq.*

12
13 *Rule 3.11 Name, Address, and Signature of Requestor.* Each request must include the full name,
14 telephone number, and mailing address of the requestor. All requests shall be signed by the
15 person filing the request, who shall attest that the request complies with the requirements set
16 forth in these rules, including but not limited to, a full, complete, and accurate statement of
17 relevant facts. Such request shall also include the statement that, to the best of the requestor's
18 knowledge, no related proceedings are pending before any other administrative or judicial
19 tribunal. A request must be limited to a single transaction or occurrence.

20
21 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
22 *seq.*, and 49-17-1, *et seq.*

23
24 *Rule 3.12 Question Presented.* Each request shall contain the following:

- 25
26 A. a clear and concise statement of all facts concerning which the opinion is requested,
27 limited to a single transaction or occurrence;
28
29 B. a citation to the statute or regulation or rule at issue;
30
31 C. the question(s) sought to be answered in the opinion, stated clearly and concisely;
32
33 D. the identity of all other, known persons involved in or impacted by the described facts,
34 including their relationship to the facts, their names, mailing addresses and telephone
35 numbers; and
36
37 E. a statement to show that the person seeking the opinion has a substantial interest in the
38 subject matter.
39

40 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
41 *seq.*, and 49-17-1, *et seq.*

42
43 *Rule 3.13 Time for Commission's Response.* Within forty-five (45) days after the receipt of a
44 request which complies with the requirements of these rules, the Department on behalf of the
45 Commission shall:
46

- 1 A. issue a written declaratory opinion regarding the specified statute, rule, or order, as
2 applied to the particular circumstances described in the request;
3
4 B. decline to issue a declaratory opinion, stating the reasons therefore; OR
5
6 C. agree to issue a declaratory opinion by a specified date, which shall be not later than
7 ninety (90) days after receipt of the written request.
8

9 The forty-five (45) day period for response shall begin running on the State of Mississippi
10 business day on which the request is received by the Executive Director of the Department on
11 behalf of the Commission. A copy of the written declaratory opinion shall be mailed promptly to
12 the requestor. The Department reserves the right to present the declaratory opinion to the
13 Commission for final consideration.
14

15 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
16 *seq.*, and 49-17-1, *et seq.*
17

18 *Rule 3.14 Notice By Commission to Third Parties.* The Department on behalf of the Commission
19 may, at its discretion, provide notice to any person, agency, or entity that a declaratory opinion
20 has been requested, and it may receive or consider data, facts, arguments, and/or opinions from
21 other persons, agencies, or other entities other than the requestor.
22

23 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
24 *seq.*, and 49-17-1, *et seq.*
25

26 *Rule 3.15 Public Availability of Requests and Declaratory Opinions.* Declaratory opinions and
27 requests for declaratory opinions shall be available for public inspection and copying in
28 accordance with the Public Records Act and the Commission's regulations concerning public
29 records requests, known as Title 11, Part 1, Chapter 2. All declaratory opinions and requests
30 shall be indexed by name and subject. Declaratory opinions and requests may be held
31 confidential by the Commission within the provisions of Title 11, Part 1, Chapter 2 regarding
32 confidentiality of records or if the information is exempt from disclosure under the Mississippi
33 Public Records Act or other laws of the State, including but not limited to Miss. Code Ann. §§
34 17-17-27(6) and 49-17-39 (Rev. 2003).
35

36 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 25-61-1, *et seq.*, 17-17-27, 49-
37 17-25, 49-17-39, 49-17-41, 49-17-17(i), 49-2-1, *et seq.*, 49-17-1, *et seq.*, and 17-17-1, *et seq.*
38

39 *Rule 3.16 Effect of Declaratory Opinions.* The Commission will not pursue any civil or criminal
40 action against a person who is issued a declaratory opinion from the Executive Director of the
41 Department on behalf of the Commission and who, in good faith, follows the direction given in
42 the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that
43 the opinion is manifestly wrong and without any substantial support. Any declaratory opinion
44 rendered by the Executive Director on behalf of the Commission or shall be binding only on the
45 Department and the Commission and the person to whom the opinion is issued. No declaratory

1 opinion will be used as precedent for any other transaction or occurrence beyond that set of facts
2 described in the original request.

3
4 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et*
5 *seq.*, and 49-17-1, *et seq.*

6
7 **Part 1, Chapter 4: Mississippi Environmental Quality Permit Board Delegation of**
8 **Permitting Authority Pursuant to Miss. Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-**
9 **15(1) And 53-7-41(6) (Adopted October 22, 1996; Revised March 27, 2001; Revised**
10 **December 14, 2004)**

11 12 **TABLE OF CONTENTS**

13
14
15 Rule 4.1 Definitions

16
17 Rule 4.2 Delegation and Reporting

18
19 Rule 4.3 Appeal
20
21

22 *Rule 4.1 Definitions.* As used in these regulations, the following terms shall have the following
23 definitions:

- 24
25 A. "Department" shall mean the Mississippi Department of Environmental Quality.
26
27 B. "Executive Director" shall mean the Executive Director of the Mississippi Department of
28 Environmental Quality.
29
30 C. "Delegated Permit" shall mean an air pollution control permit, a water pollution control
31 permit, a permit required under the Solid Waste Disposal Law of 1974 (Title 17, Chapter
32 17 of the Mississippi Code Annotated, as amended), a permit to withdraw surface water
33 or ground water pursuant to Miss. Code Ann. § 51-3-1 through 51-3-55, any related
34 general permit, a water quality certification issued pursuant to § 401 of the federal Clean
35 Water Act and Miss. Code Ann. § 49-17-28(3) or the modification or renewal of any of
36 the permit or certifications listed above. However, "Delegated Permit" shall not include
37 any permit for a commercial hazardous waste management facility or for a municipal
38 solid waste landfill or incinerator, or the modification or renewal of such a permit, or any
39 permit which by law must be issued by the Mississippi Commission on Environmental
40 Quality.
41
42 D. "Delegated Surface Mining Permit" shall mean a permit for a surface mining operation
43 pursuant to the Mississippi Surface Mining and Reclamation Act (Title 53, Chapter 7 of
44 the Mississippi Code Annotated, as amended) including any general permit.
45

1 E. "Modify," "Modified," or "Modification," shall include, but not be limited to, the transfer
2 of any rights in a permit from one party to another.

3
4 F. "Permit Board" shall mean the Mississippi Environmental Quality Permit Board, created
5 by Miss. Code Ann. § 49-17-28.

6
7 Source: Miss Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1) 53-7-41(6), 49-2-1, *et*
8 *seq.*, 49-17-1, *et seq.*, 51-3-1, *et seq.*, 53-7-1, *et seq.*, and 17-17-1, *et seq.*

9
10 *Rule 4.2 Delegation and Reporting.*

11
12 A. By the adoption of these regulations, the Permit Board, pursuant to Miss. Code Ann. §
13 49-17-29 and § 51-3-15(1), delegates to the Executive Director the authority to make
14 decisions on the issuance, reissuance, denial, modification, or revocation of Delegated
15 Permits. Pursuant to Miss. Code Ann. § 53-7-41(6), the Permit Board further delegates to
16 the Executive Director the authority to make decisions on the issuance, reissuance,
17 modification, rescission or cancellation of Delegated Surface Mining Permits. Delegated
18 Surface Mining Permits may be cancelled at the request of the operator, if the operator
19 does not commence operations under the permit by stripping, grubbing or mining any
20 part of the permit area. Delegated Surface Mining Permits may be rescinded if, because
21 of a change in post-mining use of the land by the landowner, the completion of the
22 approved reclamation plan by the operator is no longer feasible.

23
24 B. As a further condition prescribed by the Permit Board of this delegation of authority to
25 the Executive Director, the Permit Board directs the Executive Director to delegate the
26 authority to issue, reissue, deny, modify, or revoke Delegated Permits and to delegate the
27 authority to issue, reissue, modify, rescind or cancel Delegated Surface Mining Permits to
28 senior staff personnel within the Department, in order that the delegation made in section
29 II.A. of these regulations will not detract in a significant way from the Executive
30 Director's performance of his or her other duties. Delegated Permits may be issued,
31 reissued, denied, revoked, or modified and Delegated Surface Mining Permits may be
32 issued, reissued, modified, rescinded or cancelled by the Executive Director, by the Head
33 of the Office of the Department in which the permit action is taken, or by the Division
34 Chief for the Division of the Department in which the permit action is taken. The
35 Executive Director may, at his discretion, determine which of these Office Heads and
36 Division Chiefs will be granted the authority to issue, deny, revoke or modify Delegated
37 Permits and to issue, reissue, modify, rescind or cancel Delegated Surface Mining
38 Permits. The Executive Director may, at his discretion, determine that any application for
39 the issuance, reissuance, modification, denial or revocation of a Delegated Permit and
40 any application for the issuance, reissuance, modification, rescission or cancellation of a
41 Delegated Surface Mining Permit will be presented to and determined by the Permit
42 Board rather than by the Executive Director or Department personnel.

43
44 C. The Executive Director, in person or through his delegate, shall report to the Permit
45 Board at its next regularly-scheduled meeting each action taken by him or by Department
46 personnel listed above to issue, reissue, deny, modify, or revoke a Delegated Permit and

1 to issue, reissue, modify, rescind or cancel a Delegated Surface Mining Permit. The
2 Permit Board then shall vote to note and to record on its minutes the report of the
3 Executive Director or his delegate. In determining whether to note and to record on its
4 minutes the report, the Permit Board shall consider only whether the report accurately
5 lists and describes the actions taken by the Executive Director or his delegate(s). The
6 Permit Board shall not review any action regarding a permit taken by the Executive
7 Director or his delegate(s) unless and until a formal hearing on the permit action is
8 convened pursuant to Miss. Code Ann. § 49-17-29(4)(b).
9

- 10 D. If the Department or Permit Board is required by any statute or regulation to notify the
11 public of the receipt of an application for a permit or of the Department's intent to issue,
12 reissue, deny, modify, or revoke a Delegated Permit or to issue, reissue, modify, rescind
13 or cancel a Delegated Surface Mining Permit or to conduct a public hearing prior to
14 taking any permit action, no Delegated Permit or Delegated Surface Mining Permit shall
15 be issued by the Executive Director or his delegate until the statutory or regulatory public
16 notice, hearing, and comment periods and procedures are completed as required for that
17 permit action.
18

19 Source: Miss. Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1), 53-7-41(6), 49-2-1, *et*
20 *seq.*, 49-17-1, *et seq.*, 51-3-1, *et seq.*, 53-7-1, *et seq.*, and 17-17-1, *et seq.*
21

22 *Rule 4.3 Appeal:* The appeal of any issuance, reissuance, denial, modification, or revocation of a
23 Delegated Permit and the appeal of any issuance, reissuance, denial, rescission or cancellation of
24 a Delegated Surface Mining Permit by the Executive Director shall be appealable pursuant to
25 Miss. Code Ann. § 49-17-29 in the same manner as a non-delegated permit or decision of the
26 Permit Board. The time period in which an aggrieved party may file a request for a formal
27 hearing before the Permit Board concerning a Delegated Permit action or a Delegated Surface
28 Mining Permit action taken by the Executive Director or his delegate shall be calculated from the
29 date of the Permit Board meeting at which the decision of the Executive Director or his delegate
30 is accepted by the Permit Board. This time period shall be calculated in the manner prescribed by
31 Mississippi Rule of Civil Procedure 6(a).
32

33 Source: Miss. Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1), 53-7-41(6), 49-2-1, *et*
34 *seq.*, 49-17-1, *et seq.*, 51-3-1, *et seq.*, 53-7-1, *et seq.*, and 17-17-1, *et seq.*
35

36 **Part 1, Chapter 5: Mississippi Environmental Quality Permit Board: Regulations**
37 **Regarding Administrative Procedures Pursuant to the Mississippi Administrative**
38 **Procedures Act (Adopted November 8, 2005)**
39

40 **TABLE OF CONTENTS**
41

42
43 Rule 5.1 Description of Mississippi Environmental Quality Permit Board
44

45 Rule 5.2 When Oral Proceedings Will be Scheduled on Proposed Rules
46

1 Rule 5.3 Notification of Oral Proceeding for Proposed Rule-Making

2
3 Rule 5.4 Presiding Officer

4
5 Rule 5.5 Public Presentation and Participation for Proposed Rule-Making

6
7 Rule 5.6 Conduct of Oral Proceeding for Proposed Rule-Making

8
9 Rule 5.7 Persons Who May Request Declaratory Opinions

10
11 Rule 5.8 Subjects Which May be Addressed in Declaratory Opinions

12
13 Rule 5.9 Circumstances in Which Declaratory Opinions Will Not Be Issued.

14
15 Rule 5.10 Where to Send Requests

16
17 Rule 5.11 Name, Address, and Signature Of Requestor

18
19 Rule 5.12 Question Presented

20
21 Rule 5.13 Time for Permit Board's Response

22
23 Rule 5.14 Notice by Permit Board to Third Parties

24
25 Rule 5.15 Public Availability of Requests and Declaratory Opinions

26
27 Rule 5.16 Effect of Declaratory Opinions

28
29
30 *Rule 5.1 Description of Mississippi Environmental Quality Permit Board.* Reference is made to
31 Miss. Code Ann. §§ 49-17-28 and 49-17-29 (Rev. 2003), which create and set forth the duties
32 and responsibilities of the Mississippi Environmental Quality Permit Board ("Permit Board").
33 The Permit Board issues, reissues, modifies, denies, transfers, and revokes Mississippi
34 environmental permits and certifications administered under the Clean Water Act, the Clean Air
35 Act, the Resource Conservation and Recovery Act, the Surface Mining Control and Reclamation
36 Act, state mining laws, and state water resource control laws. The membership of the Permit
37 Board is set by Miss. Code Ann. § 49-17-28 (Rev. 2003). Seven of the Permit Board members
38 serve by virtue of the State office they hold. The remaining two members are appointed by the
39 Governor and are required to be a retired professional engineer knowledgeable in the engineering
40 of water wells and a retired water well contractor, respectively. The Mississippi Department of
41 Environmental Quality ("Department") serves as staff for the Permit Board. The Department
42 staff is comprised of four (4) divisions: the Office of Administrative Services, the Office of
43 Geology and Energy Resources, the Office of Land and Water Resources, and the Office of
44 Pollution Control. The Executive Director of the Department serves as the Executive Director of
45 the Permit Board. The Mississippi Commission on Environmental Quality ("Commission") is
46 empowered to formulate environmental policy, adopt and enforce rules and regulations, receive

1 funding, conduct studies for using the state's resources, and discharge duties, responsibilities,
2 and powers as necessary. The Department also serves as staff for the Commission.

3
4 Source: Miss. Code Ann. §§ 25-43-2.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
5 1, *et seq.*

6
7 *Rule 5.2 When Oral Proceedings Will Be Scheduled on Proposed Rules.* Prior to the adoption,
8 amendment, or repeal of rules and regulations administered by the Department, the Permit Board
9 shall conduct a public hearing after public notice. Such notice shall be given by publication once
10 a week for three (3) successive weeks in a newspaper having a general circulation throughout the
11 state. The notice shall contain a description of the proposed regulation and the time, date, and
12 place of the hearing.

13
14 Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
15 1, *et seq.*

16
17 *Rule 5.3 Notification of Oral Proceeding for Proposed Rule-Making.* The date, time, and place
18 of all oral proceedings for proposed rule-making shall be filed with the Office of the Secretary of
19 State and, within three (3) days of such filing, mailed to anyone who makes a timely request.
20 The oral proceedings shall be scheduled no earlier than twenty (20) days from the filing of this
21 information with the Office of the Secretary of State. For at least twenty-five (25) days from the
22 filing with the Office of the Secretary of State of the notice of proposed rule adoption, the Permit
23 Board shall afford persons the opportunity to submit, in writing, argument, data, and any views
24 on the proposed rule.

25
26 Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
27 1, *et seq.*

28
29 *Rule 5.4 Presiding Officer.* The Executive Director of the Department, or his designee who is
30 familiar with the substance of the proposed rule, shall preside at the oral proceeding on a
31 proposed rule.

32
33 Source: Miss. Code Ann. § § 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
34 1, *et seq.*

35
36 *Rule 5.5 Public Presentations and Participation for Proposed Rule-Making.*

37
38 A. At an oral proceeding on a proposed rule, persons may make oral statements and may
39 make documentary and physical submissions, which may include views, comments, or
40 arguments concerning the proposed rule.

41
42 B. The presiding officer may place time limitations on individual oral presentations when
43 necessary to assure the orderly and expeditious conduct of the oral proceeding. To
44 encourage joint oral presentations and to avoid repetition, additional time may be
45 provided for persons whose presentations represent the views of other individuals as well
46 as their own.

1
2 C. Persons making oral presentations are discouraged from restating matters that already
3 have been submitted in writing.
4

5 D. There shall be no interruption of a participant who has been given the floor by the
6 presiding officer, except that the presiding officer may, in his or her discretion, interrupt
7 or end the participant's time for presentation where the orderly conduct of the proceeding
8 so requires.
9

10 Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
11 1, *et seq.*
12

13 *Rule 5.6 Conduct of Oral Proceeding for Proposed Rule-Making.*
14

15 A. Presiding officer. The presiding officer shall have authority to conduct the proceeding
16 for proposed rule-making in his or her discretion for its orderly conduct. The presiding
17 officer may:
18

19 (1) call the proceeding to order;
20

21 (2) allow for a brief synopsis of the proposed rule and a statement of the statutory
22 authority for the proposed rule;
23

24 (3) call on those individuals who desire to speak for or against the proposed rule;
25

26 (4) allow for additional statements following all participants' comments; and
27

28 (5) adjourn the proceeding.
29

30 B. Questions. Where time permits and to facilitate the exchange of information, the
31 presiding officer may open the floor to questions or general discussion concerning the
32 proposed rule. The presiding officer in his or her discretion may question participants
33 and/or permit the questioning of participants by other participants about any matter
34 relating to that rule-making proceeding, including any prior written submissions made by
35 those participants; however, no participant shall be required to answer any question.
36

37 C. Physical and Documentary Submissions. Submissions presented by participants in an
38 oral proceeding with regard to proposed rule-making shall be submitted to the presiding
39 officer. Such submissions become the property of the Permit Board and are subject to the
40 Commission's public records request procedures.
41

42 D. Recording. The Permit Board may record oral proceedings for the purpose of rule-
43 making by stenographic or electronic means, at its discretion.
44

45 Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
46 1, *et seq.*

1
2
3 *Rule 5.7 Persons Who May Request Declaratory Opinions.* Any person with a substantial
4 interest in the subject matter may request a declaratory opinion from the Permit Board by
5 following the specified procedures. “Substantial interest in the subject matter” means: an
6 individual, business group, or other entity that is directly affected by the Permit Board’s
7 administration of a statute, rule, or order within its primary jurisdiction.
8

9 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
10 1, *et seq.*
11

12 *Rule 5.8 Subjects Which May Be Addressed In Declaratory Opinions.* The Department on behalf
13 of the Permit Board will issue declaratory opinions regarding the applicability to specified facts
14 of:
15

- 16 A. a statute administered or enforceable by the Permit Board,
17
18 B. a rule promulgated by the Permit Board, or
19
20 C. an order issued by the Permit Board. The Permit Board will not issue a declaratory
21 opinion regarding a statute, rule, or order which is outside the primary jurisdiction of the
22 Board. “Primary jurisdiction of the Board” means the Board has a constitutional or
23 statutory grant of authority in the subject matter at issue.
24

25 Source: Miss. Code Ann. § 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1,
26 *et seq.*
27

28 *Rule 5.9 Circumstances In Which Declaratory Opinions Will Not Be Issued.* The Department on
29 behalf of the Permit Board may, for good cause, refuse to issue a declaratory opinion. The
30 circumstances in which declaratory opinions will not be issued include, but are not necessarily
31 limited to:
32

- 33 A. lack of clarity concerning the question presented or situations in which the facts
34 presented in the request are not sufficient to answer the question presented;
35
36 B. pending or anticipated litigation, administrative action, or other adjudication or
37 decision making which either may answer the question presented by the request or
38 otherwise make an answer unnecessary;
39
40 C. requests that fail to contain information required by these rules or in which the
41 requestor failed to follow the procedures set forth in these rules;
42
43 D. issues which have become moot, or are abstract or hypothetical such that the
44 requestor is not substantially affected by the application of the statute or rule;
45

- 1 E. issues in which no present controversy exists, meaning that the requestor is not
2 faced with existing facts or those certain to arise which raise a question
3 concerning the application of the statute or rule;
4
- 5 F. questions concerning the legal validity of a statute or rule;
6
- 7 G. requests not based upon facts calculated to aid in the planning of future conduct,
8 but rather, adjudication of the correctness of past conduct or efforts to establish
9 the effect of that conduct;
10
- 11 H. questions involving the application of a criminal statute or sets of facts that may
12 constitute a crime;
13
- 14 I. questions the answer to which would require disclosure of information which is
15 privileged or otherwise protected from disclosure by law;
16
- 17 J. questions that are known to be currently the subject of an Attorney General's
18 opinion request or which already have been answered by an Attorney General's
19 opinion;
20
- 21 K. questions on which a similar request is pending before the Permit Board, or
22 concerning which a proceeding is known to be pending on the same subject
23 matter before any agency, administrative or judicial tribunal;
24
- 25 L. questions where issuance of a declaratory opinion may adversely affect the
26 interests of the State, the Permit Board, or any of its officers or employees in any
27 litigation pending or which reasonably may be expected to arise;
28
- 29 M. questions that involve eligibility for a license, permit, certificate, or other
30 approval by the Permit Board, or some other agency, where there is a statutory or
31 regulatory application process by which eligibility for said license, permit,
32 certificate, or other approval would be determined; or
33
- 34 N. requests not directed to the Executive Director of the Department.
35

36 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
37 1, *et seq.*
38

39 *Rule 5.10. Where to Send Requests.* All requests for declaratory opinions from the Permit Board
40 must be in writing and mailed, e-mailed, delivered, or transmitted via facsimile specifically to
41 the Executive Director of the Department. The facsimile telephone number for the Department
42 may be found at its website, <http://www.deq.state.ms.us>. No oral or telephone requests or
43 requests for declaratory opinions will be accepted. Requests not directed to the Executive
44 Director of the Department shall not be considered as requests for declaratory opinions under
45 these rules, and a response to such requests shall not be provided.
46

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, et seq., 49-17-28, 49-17-29, and 49-17-1, et seq.

Rule 5.11 Name, Address, and Signature of Requestor. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to, a full, complete, and accurate statement of relevant facts. Such request shall also include the statement that, to the best of the requestor's knowledge, no related proceedings are pending before any other administrative or judicial tribunal. A request must be limited to a single transaction or occurrence.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, et seq., 49-17-28, 49-17-29, and 49-17-1, et seq.

Rule 5.12 Question Presented. Each request shall contain the following:

- A. a clear and concise statement of all facts concerning which the opinion is requested, limited to a single transaction or occurrence;
- B. a citation to the statute or regulation or rule at issue;
- C. the question(s) sought to be answered in the opinion, stated clearly and concisely;
- D. the identity of all other, known persons involved in or impacted by the described facts, including their relationship to the facts, their names, mailing addresses and telephone numbers; and
- E. a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, et seq., 49-17-28, 49-17-29, and 49-17-1, et seq.

Rule 5.13 Time for Permit Board's Response. Within forty-five (45) days after the receipt of a request which complies with the requirements of these rules, the Department on behalf of the Permit Board shall:

The forty-five (45) day period for response shall begin running on the State of Mississippi business day on which the request is received by the Executive Director of the Department on behalf of the Permit Board. A copy of the written declaratory opinion shall be mailed promptly to the requestor. The Department reserves the right to present the declaratory opinion to the Permit Board for final consideration.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, et seq., 49-17-28, 49-17-29, and 49-17-1, et seq.

1 *Rule 5.14 Notice by Permit Board to Third Parties.* The Department on behalf of the Permit
2 Board may, at its discretion, provide notice to any person, agency, or entity that a declaratory
3 opinion has been requested, and it may receive or consider data, facts, arguments, and/or
4 opinions from other persons, agencies, or other entities other than the requestor.

5
6 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
7 1, *et seq.*

8
9 *Rule 5.15 Public Availability of Requests and Declaratory Opinions.* Declaratory opinions and
10 requests for declaratory opinions shall be available for public inspection and copying in
11 accordance with the Public Records Act and the Commission's regulations concerning public
12 records requests, known as MCEQ-2. All declaratory opinions and requests shall be indexed by
13 name and subject. Declaratory opinions and requests may be held confidential by the Permit
14 Board within the provisions of MCEQ-2 regarding confidentiality of records or if the
15 information is exempt from disclosure under the Mississippi Public Records Act or other laws of
16 the State, including but not limited to Miss. Code Ann. §§ 17-17-27(6) and 49-17-39 (Rev.
17 2003).

18
19 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
20 1, *et seq.*

21
22 *Rule 5.16 Effect of Declaratory Opinions.* The Permit Board will not pursue any civil or
23 criminal action against a person who is issued a declaratory opinion from the Executive Director
24 of the Department on behalf of the Permit Board and who, in good faith, follows the direction
25 given in the opinion and acts in accordance therewith unless a court of competent jurisdiction
26 holds that the opinion is manifestly wrong and without any substantial support. Any declaratory
27 opinion rendered by the Executive Director on behalf of the Permit Board shall be binding only
28 on the Department and the Permit Board and the person to whom the opinion is issued. No
29 declaratory opinion will be used as precedent for any other transaction or occurrence beyond that
30 set of facts described in the original request.

31
32 Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-
33 1, *et seq.*